

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LOIS JEAN PLECKER)	
Claimant)	
VS.)	
)	Docket Nos. 173,706 & 173,707
GOTT CORPORATION)	
Respondent)	
AND)	
)	
AMERICAN MANUFACTURERS MUTUAL)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent and its insurance carrier appeal from an Award rendered by Special Administrative Law Judge William F. Morrissey on May 11, 1994.

APPEARANCES

Claimant appeared by and through her attorney, Timothy J. King of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, John L. Carmichael of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Vincent L. Bogart of Wichita, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has reviewed and considered the record listed in the Award. The Appeals Board adopts the stipulations listed in the Award.

ISSUES

On appeal, respondent asks for review of the findings and conclusions regarding:

- (1) Nature and extent of claimant's disability;
- (2) Liability of the Workers Compensation Fund.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the arguments of the parties, the Appeals Board finds and concludes as follows:

- (1) Claimant is entitled to an award of permanent partial general body disability benefits based upon a fourteen percent (14%) impairment of function.

Claimant alleges repetitive use injury to her neck, upper back, shoulders and arms beginning July 1992 and continuing each and every working day thereafter in Docket No. 173, 707. In the course of physical therapy or work hardening treatment for her injury in Docket No. 173,707, claimant injured her right knee on September 1, 1992. That right knee is the subject of the claim in Docket No. 173,706. The parties have stipulated to not only combining these two (2) docketed claims for purposes of trial, but also that they may be treated together as one injury and claim for purposes of award. The Special Administrative Law Judge adopted the agreement of the parties and found there to be one accident. The parties do not raise that finding as an issue in this appeal. Accordingly, the Appeals Board approves and adopts the finding by the Special Administrative Law Judge that there was one accident occurring on July 6, 1992 for purposes of computation of the Award herein.

However, the Special Administrative Law Judge incorrectly relates the dates of accident of July 6, 1992 to Docket No. 173,706 and the accident of September 1, 1992 to Docket No. 173,707. These docket numbers and dates of accident as found by the Special Administrative Law Judge are the reverse of the docket numbers corresponding to the alleged dates of accident as contained in the files of the Division of Workers Compensation. The parties again do not raise this as an issue, presumably because these two accidents are being treated together as one (1) claim for purposes of award and, therefore, it makes no practical difference to the parties as to which accident date applies to which docket number, but for statistical and record-keeping purposes the Appeals Board will correct the findings of the Special Administrative Law Judge in this regard.

Claimant was hired by respondent on November 2, 1988 as a production worker. She began experiencing pain and physical problems in July of 1992 first in her left elbow and then into her left shoulder. Later her right arm started getting numb and going to sleep the same as her left. Her pain subsequently developed into both shoulders, across the center of her back and into her neck. As of the date of her Regular Hearing testimony,

given in this case on December 20, 1993, the claimant was still working for the respondent. She testified that her pain had slowly increased since its onset in July of 1992. She testified that she had a prior work-related injury with respondent in approximately 1989 for which she underwent carpal tunnel release surgery in both wrists. Following that surgery she returned to work with respondent doing the same type of work she had performed prior to her developing carpal tunnel syndrome. She testified that she has not had any more trouble with her hands since returning to work following her carpal tunnel release surgery. At the time of her Regular Hearing testimony she was working light duty.

Neither party argues that claimant is entitled to work disability. The issue with regard to the nature and extent of claimant's disability is as to her impairment of function. The parties have presented the testimony of two physicians who have examined and rated claimant for purposes of giving testimony in this case. There is no testimony offered from the treating physicians.

The claimant presented the testimony of Ernest R. Schlachter, M.D. He examined claimant on August 5, 1993 at the request of her attorney. Dr. Schlachter graduated from medical school in 1952 and served an internship at St. Francis in Wichita, Kansas until 1953. Since that time he has been in the general practice of medicine in Wichita, Kansas. Dr. Schlachter made the following diagnoses:

- (1) Overuse syndrome of both shoulder girdles with tendonitis to the left shoulder.
- (2) Left thoracic outlet syndrome.
- (3) Overuse syndrome of the dorsal and cervical spine.
- (4) Medial epicondylitis of the left elbow.
- (5) Overuse syndrome of both upper extremities with entrapment neuropathy of the ulnar nerve at the wrist bilaterally.

Dr. Schlachter opined that claimant has a five percent (5%) permanent partial impairment of function to the body as a whole due to her cervical spine; a five percent (5%) permanent partial impairment of function to the body as a whole due to her dorsal spine; a five percent (5%) permanent partial impairment of function to the body as a whole due to her right shoulder; a ten percent (10%) permanent partial impairment of function to the body as a whole due to her left shoulder; a fifteen percent (15%) permanent partial impairment of function to the right upper extremity, which converts to a nine percent (9%) permanent partial impairment of function to the body as a whole; a twenty percent (20%) permanent partial impairment of function to the left upper extremity, which converts to a twelve percent (12%) permanent partial impairment of function to the body as whole. These individual ratings he combined to find a thirty-eight percent (38%) permanent partial impairment to the body as a whole. He did not give a separate impairment of function rating for the diagnosis of thoracic outlet syndrome as he noted that this was included in his other ratings. He further found claimant had a ten percent (10%) permanent partial impairment of function to each upper extremity due to her prior carpal tunnel surgery, that she has an

additional five percent (5%) impairment of function to the right upper extremity and a ten percent (10%) increased impairment of function to the left upper extremity due to her most recent injuries received beginning in July of 1992.

At that same examination of August 5, 1993, Dr. Schlachter evaluated claimant for injuries to her right knee received on September 1, 1992. He diagnosed synovitis and patellofemoral syndrome of the right knee. He opined that claimant sustained a ten percent (10%) permanent partial impairment of function to her right lower extremity as a result of the September 1, 1992 right knee injury.

Dr. Schlachter combined the two injuries by converting the ten percent (10%) of function to the lower extremity to a four percent (4%) permanent partial impairment to the body as a whole which he then added to the thirty-eight percent (38%) whole body impairment for a combined permanent partial impairment of function of forty percent (40%) to the body as a whole. The Special Administrative Law Judge in his Award of May 11, 1994 stated that, based principally upon the testimony of Dr. Ernest R. Schlachter, he found that claimant suffers from a forty-two percent (42%) permanent partial general body impairment of function.

Respondent presented the testimony of Robert A. Rawcliffe, Jr., M.D., a board-certified orthopedic surgeon. He examined claimant on May 20, 1993 at the request of the respondent. He diagnosed overuse syndrome involving claimant's neck and shoulders as a result of her work activities with the respondent. He further indicated that his findings were suggestive of a thoracic outlet syndrome. In his opinion claimant has a ten percent (10%) impairment to the body as a whole due to the condition in her neck and shoulders. He did not give an opinion concerning an impairment of function for the right knee. Dr. Rawcliffe was asked to assume a ten percent (10%) impairment of function to the right lower extremity as testified to by Dr. Schlachter and combined that rating to his finding of a ten percent (10%) whole body impairment. Using the AMA Guides for Evaluation of Permanent Impairment, Third Edition (Revised), Dr. Rawcliffe stated that a ten percent (10%) impairment of a lower extremity converts to a four percent (4%) impairment of the body as a whole, which combines with the ten percent (10%) for a fourteen percent (14%) whole body impairment.

The Appeals Board finds that in this instance and under the facts of this case the opinions of Dr. Rawcliffe are more credible and should be followed over those given by Dr. Schlachter. The primary reason for giving greater weight to the opinion of Dr. Rawcliffe is that his diagnoses more closely parallel the complaints testified to by claimant. Dr. Schlachter assigned impairment of function to the claimant on the basis of overuse syndrome of both upper extremities with entrapment neuropathy of the ulnar nerve at the wrist bilaterally. However, claimant did not testify to any symptoms or complaints with regard to her hands and wrists. In fact, she specifically denied injury to those areas. Therefore, the Appeals Board finds that claimant has sustained a fourteen percent (14%)

whole body impairment of function as a result of her injuries of July 6, 1992 and September 1, 1992.

The Kansas Workers Compensation Fund has no liability for any portion of this award. Dr. Schlachter found a causal relationship between each of his diagnoses for the injuries claimant suffered in July 1992 and thereafter and her pre-existing carpal tunnel syndrome condition, with the exception of the condition that he diagnosed in her dorsal spine. He opined that but for the pre-existing carpal tunnel syndrome she would not have sustained the subsequent problems. On the other hand, Dr. Rawcliffe testified that in his opinion there was no known reason to believe that someone with carpal tunnel syndrome would be more than ordinarily prone to develop problems in other parts of the body, including the elbow, shoulder and neck. The fact that claimant testified she did not have problems with her hands and wrist following her return to work after carpal tunnel release surgery lends support to Dr. Rawcliffe's opinion in this regard. The Appeals Board finds that the finding and conclusion by the Special Administrative Law Judge that no part of the liability for this claim is the responsibility of the Kansas Workers Compensation Fund should be affirmed.

The finding by the Special Administrative Law Judge of an average weekly wage of \$387.56 was not appealed. The Appeals Board therefore adopts this finding as well as all other findings and conclusions made by the Special Administrative Law Judge which are not inconsistent with the findings and conclusions of the Appeals Board herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated May 11, 1994 should be, and hereby is, modified as follows:

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Lois Jean Plecker, and against the respondent, Gott Corporation, and its insurance carrier, American Manufacturers Mutual, for an accidental injury which occurred July 6, 1992 and based upon an average weekly wage of \$387.56, for 27.29 weeks of temporary total disability compensation at the rate of \$258.39 per week or \$7,051.46, followed by 387.71 weeks at the rate of \$36.17 per week or \$14,023.47 for a 14 % permanent partial general body impairment of function, making a total award of \$21,074.93.

As of October 20, 1995, there is due and owing claimant 27.29 weeks of temporary total disability compensation at the rate of \$258.39 per week or \$7,051.46, followed by 144.28 weeks of permanent partial disability compensation at the rate of \$36.17 per week in the sum of \$5,218.61, for a total of \$12,270.07 which is ordered paid in one lump sum

less any amounts previously paid. The remaining balance of \$8,804.86 is to be paid for 243.43 weeks at the rate of \$36.17 per week, until fully paid or further order of the Director.

The Appeals Board otherwise approves and adopts the remaining orders entered by the Special Administrative Law Judge as set forth in his May 11, 1994 Award.

IT IS SO ORDERED.

Dated this ____ day of October 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Timothy J. King, Wichita, KS
P. Kelly Donley, Wichita, KS
Vincent L. Bogart, Wichita, KS
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director